

**CITY OF TEMECULA
COMMUNITY DEVELOPMENT BLOCK GRANT (FY 2014-15)
SUBRECIPIENT AGREEMENT**

THIS SUBRECIPIENT AGREEMENT ("Agreement") is made and entered into this _____, by and between the City of Temecula ("City"), a municipal corporation, and _____ ("Subrecipient"), a nonprofit corporation.

RECITALS

WHEREAS, the City is a Direct Entitlement City with the U.S. Department of Housing and Urban Development ("HUD") for purposes of receiving Community Development Block Grant ("CDBG") funds under the Federal Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 *et seq.*, as amended from time to time, the "Act") and the pertinent sections of the Code of Federal Regulations (24 C.F.R. Part 570 and Part 84, as amended from time to time, the "Regulations") to assist and undertake essential community development and housing assistance activities; and

WHEREAS, federal law provides that the City may engage a nonprofit organization to assist in utilizing the CDBG funds pursuant to a subrecipient agreement; and

WHEREAS, the City desires to grant a portion of its CDBG allocation for the Fiscal Year 2014-2015 to the Subrecipient for the purpose of administering a _____ (the "Program") for qualified low- and moderate-income residents of the City of Temecula.

NOW, THEREFORE, the parties agree as follows:

1. **TERM.** The term of this Agreement shall be for a period of one year commencing July 1, 2014 and ending June 30, 2015, unless a one-year extension for CDBG funding is approved in writing by the City Manager, or his or her designee. Upon the expiration of this Agreement, Subrecipient shall transfer to the City any CDBG funds on hand and any accounts receivable attributable to the use of CDBG funds under this Agreement.
2. **USE OF CDBG FUNDS.** Subrecipient shall use the CDBG funds provided to Subrecipient solely to administer the Program pursuant to the terms and conditions of this Agreement. The Program is more particularly set forth in Exhibit "A" attached hereto and incorporated herein by reference. The CDBG funds shall be used solely to reimburse actual expenses incurred by Subrecipient in the administration of the Program as set forth in the "Budget," attached hereto as Exhibit "B" and incorporated herein by reference.
3. **SCOPE OF SERVICES.** Subrecipient shall administer, including providing all necessary or reasonable labor, materials, services, supervision, tools, equipment, licenses, and permits, the Program, as set forth in Exhibit "A".
4. **FUNDS.** The City agrees to provide Subrecipient with CDBG funds in an amount not to exceed \$_____.00 for reimbursement of Subrecipient's Program administrative costs. The City shall disburse the funds on a reimbursable basis, as provided in Section 5 of this Agreement. Subrecipient shall provide copies of invoice(s), bank statements, etc. as required for reimbursement in a timely manner. Funds may be reimbursed only for those verified expenses for eligible uses of CDBG funds. Subrecipient is prohibited from using CDBG funds provided under this Agreement or personnel employed in the

administration of the Program for: political activities in violation of Chapter 15 of Title V of the United States Code; inherently religious activities prohibited by 24 CFR § 570.200(j), such as worship, religious instruction or proselytization; lobbying; political patronage; and nepotism activities. Subrecipient is further prohibited from using CDBG funds provided under this Agreement or personnel employed in the administration of the Program for construction, renovation or repair work.

5. **PAYMENT.** The City shall make reimbursement payments to Subrecipient upon Subrecipient's submittal of and City's approval of: (i) a detailed invoice; and (ii) the program monitoring reports required under Section 12 of this Agreement. Reimbursement will be made no more frequently than on a monthly basis. Subrecipient shall submit to the City an invoice, in a form acceptable to the City, setting forth the amounts actually expended by Subrecipient for administration of the Program in compliance with the Budget. Invoices shall, at a minimum, set forth each budget category for which reimbursement is sought, a description of the expense, the total budgeted amount for the category, the amount requested to be reimbursed for each budget category, the total amount expended for each budget category to date, and a statement that no funds from another source have been utilized for the expenses. Invoices shall be accompanied by such additional supporting information as may be requested by the City, including, but not limited to, paid receipts for each expense. Payments may be contingent upon the City's approval of Subrecipient's financial management system, which must comply with all federal regulations. To the extent the CDBG funds actually have been received from HUD, City shall pay Subrecipient for all approved expenses stated on an invoice no later than the thirtieth (30th) day after the invoice is received.
6. **MAINTENANCE OF CDBG FUNDS.** All CDBG funds received by Subrecipient shall be maintained in an account separate and apart from all other funds of Subrecipient with a bank or savings and loan association qualified to do business in the State of California and insured by the Federal Deposit Insurance Corporation ("FDIC"). In the event that the grant amount exceeds the FDIC insurance limit, the grant shall be split up and deposited in more than one bank, with no more than the amount of the FDIC insurance limit being deposited in one bank, and each bank shall be insured by the FDIC.
7. **PROCUREMENT.** Subrecipient shall not use CDBG funds received from the City pursuant to this Agreement to procure materials, equipment or property or acquire or improve real property. The City is providing CDBG funding for Subrecipient's Program administration costs (i.e., wages and benefits of Subrecipient's personnel administering the Program), as specified in Exhibit A. Unless otherwise specified in this Agreement, Subrecipient shall procure all services necessary for Program administration in accordance with the requirements of 24 CFR §§ 84.40-48.
8. **REPRESENTATIONS AND WARRANTIES.** Subrecipient hereby represents and warrants to the City as follows:
 - A. Subrecipient has read and is familiar with all of the terms and provisions of the Act and the Regulations applicable to Subrecipient.
 - B. Subrecipient is a nonprofit organization authorized to receive CDBG funds under the Act and the Regulations.
 - C. The administration of the Program, and any expenses to be reimbursed by the

CDBG funds, as described in the Budget, are permitted uses of CDBG funds under the Act and the Regulations.

- D. The Subrecipient shall not undertake any activities requiring the City or Subrecipient to comply with the provisions of the Davis-Bacon Act, 40 U.S.C. Section 276a *et seq.*, as amended from time to time.
 - E. The Subrecipient will not undertake any activities requiring the City or the Subrecipient to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC Section 4601 *et seq.*, as amended (the "URA"), and implementing regulations at 49 CFR Part 24 and 24 CFR § 570.606(b); (b) the requirements of 24 CFR § 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the Act; or (c) the requirements in 24 CFR § 570.606(d) governing optional relocation policies.
9. **COMPLIANCE WITH LAWS.** Subrecipient shall comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570, including Subpart K of Part 570, except that Subrecipient does not assume the City's environmental responsibilities described in Section 570.604 or the City's responsibility for initiating the environmental review process under Part 52 of Title 24 of the Code of Federal Regulations. Subrecipient shall comply with all other applicable federal, state, and local laws, regulations and policies governing the funds provided under this Agreement, including, but not limited to, the applicable provisions of Part 84 of Title 24 of the Code of Federal Regulations. Subrecipient further agrees to utilize the CDBG funds available under this Agreement to supplement rather than supplant funds otherwise available.
10. **ACCOUNTING SYSTEM.** Subrecipient shall comply with applicable accounting standards and cost principles in accordance with 24 CFR §§ 84.21-28 and OMB Circulars A-122 or A-21, as applicable. Accounting systems should include a chart of accounts, a cash receipts journal, a cash disbursement journal, a payroll journal, a general ledger, and any other form that may be required as part of Subrecipient's accounting/financial tracking system. Subrecipient shall adhere to the accounting principles and procedures required under 24 CFR §§ 84.21-28, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. Subrecipient shall apply the cost principles for all costs incurred whether charged on a direct or indirect basis.
11. **AUDITING.** All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the City, HUD, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Subrecipient within thirty (30) calendar days after receipt by Subrecipient. Failure of Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Subrecipient shall be subject to the annual audit requirements contained in OMB Circular A-133. In addition, Subrecipient shall be subject to random audits by the City in its administration of the City's CDBG program and federally funded projects/programs.
12. **REPORTING.** Subrecipient shall submit the Self Certification Forms (if applicable) and Direct Benefit Activity Reports for duplicated and unduplicated clients to the City on a

quarterly basis from July 1, 2014, to June 30, 2015. In addition, Subrecipient shall report the following statistical information on a quarterly and annual basis: Number of persons assisted (by age, gender, senior 62 years of age or older, race, income level, head of household, how many in family, services provided, etc.), the number of people that will be provided with new or improved access to services and/or facilities, and the number of beds created (homeless or rehabilitation facilities), if applicable. Public Facilities Improvements or construction projects will require the above information pertaining to the participation in the organization's overall program(s), and once the project is completed, data pertaining specifically to that facility will be reported under the Annual Follow-Up Report. Subrecipient shall prepare and submit financial, program progress, evaluations, and other reports as required by Section 570.507 of Title 24, OMB Circular A-110, and as otherwise required by HUD and the City. **If Subrecipient fails to follow the reporting requirements, Subrecipient may be required to reimburse funds already paid and/or the forfeiture of remaining grant funds.**

13. **ANNUAL FOLLOW-UP REPORT.** Subrecipient shall submit the Annual Follow-Up Report, as provided by the City, no later than August 30 of the year following grant expiration or close of the Program, if a time extension was granted. This report will include similar information to direct benefits activity and quarterly reports.
14. **DISCRIMINATION.** Subrecipient shall abide by Sections 570.601 and 570.602 of Title 24 of the Code of Federal Regulations, which require compliance with various anti-discrimination laws, and particularly requires that no persons in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with CDBG funds. Subrecipient shall comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR § 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the Act are still applicable. Further, Subrecipient shall comply with all federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), which prohibits discrimination against the individuals with disabilities or handicaps in any federally assisted program.
15. **CIVIL RIGHTS.** Subrecipient shall comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Act, as amended, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
16. **LICENSING.** Subrecipient shall obtain and maintain all licenses, registrations, accreditation, and inspections from all agencies governing its Program operations and its operations under this Agreement. Subrecipient shall ensure that its staff shall also obtain and maintain all required licenses, registrations accreditation and inspections from all agencies governing Subrecipient's Program operations and its operations under this Agreement.
17. **RECORDS.** Subrecipient shall maintain all records as to the use and expenditure of funds under this Agreement, as well as all documents pertaining to the Program and required reporting records. All documents and records shall be made available for inspection and copying during normal business hours by the City or by HUD.

Subrecipient shall retain all financial records, supporting documents, statistical records and all other records pertinent to this Agreement four (4) years from the date of submission of the City's annual performance and evaluation report to HUD in which the activities assisted under this Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later. Subrecipient shall maintain all records required by the federal regulations specified in 24 CFR § 570.506, that are pertinent to the Program partially funded under this Agreement. Such records shall include, but not be limited to:

- A. Records providing a full description of each activity undertaken;
 - B. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
 - C. Records required to determine the eligibility of activities;
 - D. Records required to document the acquisitions, improvements, and use of disposition of real property acquired or improved with CDBG assistance;
 - E. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
 - F. Financial records as required by Sections 570.502 and 84.21-28 of Title 24 of the Code of Federal Regulations; and
 - G. Any other records necessary to document compliance with Subpart K of Part 570 of Title 24 of the Code of Federal Regulations.
18. **CLIENT DATA.** Subrecipient shall maintain applicant data demonstrating applicant eligibility for the Program. Such data shall include, without limitation, applicant name, address, income level or other basis for determining eligibility, and a description of the improvement performed. Such information shall be made available to City monitors or their designees for review upon request.
19. **DISCLOSURE.** Subrecipient understands that applicant information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City's or Subrecipient's responsibilities with respect to the Program implemented under this Agreement, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
20. **INDEMNIFICATION.**
- A. Subrecipient shall defend, hold harmless and indemnify City, its officers, employees, volunteers, and agents, including those serving as independent contractors in the role of City officials, from any claim, demand, damage, liability, loss, cost or expense, for any damage whatsoever, including without limitation death or injury to any person and injury to any property, arising out of, attributable to, or connected with the performance by Subrecipient of this Agreement and Subrecipient's administration of the Program.

- B. City does not, and shall not, waive any rights that it may possess against Subrecipient because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost, or expense. Subrecipient agrees that Subrecipient's covenant under this Section shall survive the expiration or termination of this Agreement.
- C. Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to Subrecipient, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to Subrecipient or to its successor, or for breach of any obligation of the terms of this Agreement.
21. **CONFLICT OF INTEREST.** Subrecipient shall familiarize itself with the Regulations prohibiting conflicts of interest, including those contained in Sections 84.42 and 570.611 of Title 24 of the Code of Federal Regulations. Subrecipient, its assigns, employees, agents, consultants, and officers shall comply with and shall not violate any provision of the Regulations. Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by federal funds. No employee, officer or agent of Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City or Subrecipient. Any violation of those Regulations related to conflicts of interest shall be deemed a material breach of this Agreement and the Agreement shall be immediately terminated by the City.
22. **ELIGIBILITY.** As to Subrecipient or its claimants, the City shall bear no liability for any later determination by HUD or any other person or entity that the City or Subrecipient is or is not eligible under Part 570 of Title 24 to receive CDBG funds.
23. **PROGRAM INCOME.** For the purpose of this Section, "program income" means the gross income received by the Subrecipient directly generated from the use of CDBG funds, as defined in Section 570.500(a) of Title 24 of the Code of Federal Regulations. If Subrecipient earns program income, Subrecipient shall report program income earned to City and may be required to remit all or part of the program income at the end of the program year. Subrecipient shall comply with Section 570.504 of Title 24 of the Code of Federal Regulations with respect to the use and remittance of program income. Subrecipient may use such income during the term of this Agreement for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the City at the end of the Agreement term. Any interest

earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the City.

24. SUSPENSION AND TERMINATION.

- A. City may terminate this Agreement upon thirty (30) calendar days' written notice to Subrecipient. City may immediately terminate this Agreement upon the termination, suspension, discontinuation or substantial reduction in CDBG funding for the Program administration costs. Additionally, City may terminate this Agreement upon seven (7) calendar days' written notice to Subrecipient if City determines in its sole discretion that such action is necessary to respond to an earthquake, fire or other act of God. In the event of termination, Subrecipient shall be entitled to reimbursement only for approved expenses incurred up to the effective date of termination to the extent CDBG funds are available.
- B. In accordance with Section 85.43 of Title 24 of the Code of Federal Regulations, the City may suspend or terminate this Agreement if Subrecipient materially fails to comply with any term of this Agreement, which include, without limitation, the following:
 - 1) Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
 - 2) Failure, for any reason, of Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
 - 3) Ineffective or improper use of funds provided under this Agreement; or
 - 4) Submission by Subrecipient to the City of reports that are incorrect or incomplete in any material respect.
- C. In accordance with Section 85.44 of Title 24 of the Code of Federal Regulations, this Agreement may also be terminated for convenience by the City or Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the City determines that the remaining portion of the Agreement will not accomplish the purpose for which the Agreement was made, the City may terminate this Agreement in its entirety.
- D. If the City demands reimbursement for prior payments to Subrecipient due to Subrecipient's failure to comply with any applicable term of this Agreement, the Act or the Regulations, Subrecipient shall reimburse the City in the amount of such disallowed payments.
- E. If this Agreement is terminated or suspended, the City in its sole discretion may withhold further awards for the Project and/or the Facility.

- 25. REVERSION OF ASSETS.** Upon expiration, termination or suspension of this Agreement, Subrecipient shall transfer to the City any CDBG funds including program income on hand as well as any accounts receivable and interest attributed to the use of CDBG funds under this Agreement.

26. **CLOSE-OUTS.** Subrecipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, without limitation: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that Subrecipient has control over CDBG funds, including program income.
27. **DEBARMENT AND SUSPENSION.** Pursuant to Section 84.13 of Title 24, Subrecipient shall comply with the government-wide debarment and suspension requirements in Part 2424 of Title 2 of the Code of Federal Regulations.
28. **DRUG-FREE WORKPLACE REQUIREMENTS.** Subrecipient shall comply with the drug-free workplace requirements in accordance with the Act and the Part 24, Subpart F of Title 24 of the Code of Federal Regulations. (Drug-Free Workplace Act of 1988, (42 U.S.C.701), as stated in Section 84.13 of Title 24).
29. **BYRD ANTI-LOBBYING AMENDMENT.** Subrecipient certifies that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or officer or employee of Congress in connection with obtaining any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, Subrecipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Subrecipient shall disclose any lobbying with non-Federal funds that takes place in conjunction with obtaining any Federal award. Subrecipient shall require that the foregoing language be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose as follows: "This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure."
30. **WOMEN- AND MINORITY-OWNED BUSINESSES (W/BE).** Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. § 632), and "minority and women's business enterprise" means a business at least fifty-one percent (51%) owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans and American Indians. Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation. Subrecipient shall send to each labor

union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

31. **EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION (EEO/AA).** Subrecipient agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Subrecipient will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Subrecipient agrees to post in a conspicuous place, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discriminating clause. Subrecipient will ensure that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin. Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
32. **SECTION 3.**
- A. Subrecipient and its subrecipients and subcontractors shall comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, implementing regulations in Part 135 of Title 24 of the Code of Regulations, and all applicable rules and orders issued thereunder. Failure to fulfill these requirements shall subject the City, Subrecipient and any of Subrecipient's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the agreement through which federal assistance is provided. Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.
- B. Subrecipient shall comply with the Section 3 requirements and include the following language in all subcontracts executed under this Agreement: "The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."
- C. Subrecipient shall ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service

area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

- D. Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.
- E. Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- F. Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. Subrecipient shall not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

33. **INSURANCE.**

Subrecipient shall comply with the bonding and insurance requirements of 24 CR §§ 84.31 and 84.48, as applicable. Subrecipient shall procure and maintain during the term of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of this Agreement by Subrecipient, its agents, representatives, or employees or Subrecipient's implementation of the Project.

- A. Minimum Scope of Insurance. Coverage shall be at least as broad as:
 - 1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.
 - 2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Subrecipient owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.
 - 3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Subrecipient has no employees while performing under this Agreement, workers' compensation insurance is not required, but Subrecipient shall execute a declaration that it has no employees.

- 4) Professional Liability Insurance shall be written on a policy form providing professional liability for the Subrecipient's profession.
- B. Minimum Limits of Insurance. Subrecipient shall maintain limits no less than:
- 1) General Liability: One million (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - 2) Automobile Liability: One million (\$1,000,000) per accident for bodily injury and property damage.
 - 3) Workers' Compensation as required by the State of California; Employer's Liability: One million dollars (\$1,000,000) per accident for bodily injury or disease.
 - 4) Professional Liability Coverage: One million (\$1,000,000) per claim and in aggregate.
- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions shall not exceed Twenty Five Thousand Dollars and No Cents (\$25,000).
- D. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
- 1) The City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees and volunteers are to be covered as insured's, as respects: liability arising out of activities performed by or on behalf of Subrecipient; products and completed operations of Subrecipient; premises owned, occupied or used by Subrecipient; or automobiles owned, leased, hired or borrowed by Subrecipient. The coverage shall contain no special limitations on the scope of protection afforded to the City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees or volunteers.
 - 2) For any claims related to the Project, Subrecipient's insurance coverage shall be primary insurance as respects the City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, officials, employees or volunteers shall be excess of Subrecipient's insurance and shall not contribute with it.
 - 3) Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City of Temecula, the Temecula Community Services District, and the Successor Agency to the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees or volunteers.
 - 4) Subrecipient's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- 5) Each insurance policy required by this Agreement shall be endorsed to state in substantial conformance to the following: If the policy will be canceled before the expiration date the insurer will notify in writing to the City of such cancellation not less than thirty (30) days' prior to the cancellation effective date.
 - 6) If insurance coverage is canceled or, reduced in coverage or in limits Subrecipient shall within two (2) business days of notice from insurer phone, fax, and/or notify the City via certified mail, return receipt requested of the changes to or cancellation of the policy.
 - E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of A-:VII or better, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.
 - F. Verification of Coverage. Subrecipient shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the City. All endorsements are to be received and approved by the City before work commences. As an alternative to the City's forms, Subrecipient's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Section.
34. **INDEPENDENT CONTRACTOR.** Neither the City nor any of its employees shall have any control over the manner, mode or means by which Subrecipient, its agents or employees, administers the Program as required herein, except as otherwise set forth herein. The City shall have no voice in the selection, discharge, supervision or control of Subrecipient's employees, servants, representatives or agents, or in fixing their number, compensation, or hours of service. Subrecipient shall administer the Program as required herein as an independent contractor of the City and shall remain at all times as to the City a wholly independent contractor with only such obligations as are consistent with the role. Subrecipient shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of the City. The City shall not in any way or for any purpose become or be deemed to be a partner of Subrecipient in its business or otherwise or a joint venture or a member of any joint enterprise with Subrecipient. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as Subrecipient is an independent contractor.
35. **CITY RECOGNITION.** Subrecipient shall insure recognition of the role of the City in administering the Program through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.
36. **SUBCONTRACTING AND ASSIGNMENT.** Neither this Agreement nor any interest herein may be transferred, assigned, conveyed, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of the City. Subrecipient shall furnish and cause each of its approved subrecipients or subcontractors to furnish all information and reports required under this Agreement and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated in this Agreement. Subrecipient shall send to each labor union or representative of workers with which it

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has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. Subrecipient shall include the provisions of Sections 14, 15, 31, 32 and 38 of this Agreement, in every approved subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its approved subrecipients or subcontractors.

37. **WAIVER.** Waiver by either party of any of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by the City of any payment to Subrecipient constitute or be construed as a waiver by the City of any breach of covenant, or any default that may then exist on the part of Subrecipient, and the making of any such payment by the City shall in no way impair or prejudice any right or remedy available to the City with regard to such breach or default.
38. **ENTIRE AGREEMENT AND MODIFICATION.** This Agreement contains the entire agreement of the parties and supersedes all other prior negotiations, understandings or agreements. This Agreement may be modified only by the written consent of the parties. The City may, in its discretion, amend this Agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both the City and Subrecipient.
39. **NOTICE.** Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid first class mail, to the following addresses:

To City: City of Temecula
 Attn: City Manager
 41000 Main Street
 Temecula, CA 92590

To Subrecipient:

Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

40. **CORPORATE AUTHORITY.** The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) such persons are duly authorized to execute and deliver this Agreement, on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this

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Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

41. **HEADINGS.** The headings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.
42. **SEVERABILITY.** If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall remain in full force and effect.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by its officers on the date written introductory clause.

CITY OF TEMECULA

BY: _____
Aaron Adams, City Manager
City of Temecula

Attest: _____
Randi Johl-Olson, JD, MMC
City Clerk

Approved as to Form:

Peter M. Thorson
City Attorney

SUBRECIPIENT

BY: _____

Print Name

Title

BY: _____

Print Name

Title

EXHIBIT A
DESCRIPTION OF PROJECT -
SCOPE OF SERVICES

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EXHIBIT B
PROJECT BUDGET